Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

Concerning the Proper Stamps upon Assignments of Policies of Insurance.
By C. J. BUNYON, Esq., M.A., F.I.A., *Barrister-at-Law.*

THE new Stamp Act does not, as perhaps might have been expected, set at rest the much disputed question, whether the assignment of a chose in action requires an *ad valorem* stamp. The clauses in the schedule to the new Act, upon which the question will depend, and which immediately follow the words "conveyance and mortgage," are word for word the same as those in the schedule to the 55 Geo. III., c. 184, and hence it will remain abstractedly in the same position as before. A strong opinion has been expressed that in every case of such an assignment, whether by way of mortgage or upon a sale, the *ad valorem* stamp is necessary; and, assuming that the points depend upon the construction of the word "property" in the statute, it is argued that "whatever is dealt with as property, and is the subject of sale or mortgage, is property within the meaning of the Act, and that the instrument by which the transfer is effected is chargeable with the *ad valorem* duty, unless expressly exempted."—(Tilsley, 'Stamp Laws,' 248.)

This opinion becomes of importance, as it may be presumed to be that of the new tribunal of stamps established at Somerset House; we now, therefore, propose to consider it in connection with the decided cases, in order to ascertain, if possible, its correctness, and also the practical effect of the new enactment and scale of duties upon the point in question.

In looking at the words of the statute, some surprise may be felt that there ever should have been any question in the case of a mortgage, the *ad valorem* stamp being required upon the "mortgage, conditional surrender by way of mortgage, further charge, wadset, heritable bond, disposition, or tack in security, and eik to a reversion *of or affecting any lands, estate, or property, real or personal, heritable or moveable, whatsoever.*" Upon these words it has been decided that any writing containing a contract to charge any property, real or personal, as a security, is subject to the *ad valorem* stamp; but upon the point in question, it was objected that, upon the authority of Warren *v.* Howe (to which we shall hereafter have occasion to refer) and other cases, a policy was not property within the meaning of the Act. When, however, the question was distinctly raised for the decision of the court in the late case of Caldwell *v.* Dawson, 14 Jur., 316, the result was, as might have been anticipated, that an *ad valorem* stamp was held necessary. In that case a policy was assigned by deed, as a security for a debt which the borrower and his surety covenanted to pay; and Baron Parke observed: "We are now for the first time called upon to put construction on this clause of the Stamp Act; and I think that this sort of instrument falls under the description of a mortgage affecting property within the meaning of that clause. The words of it are, 'Any mortgage of or affecting any lands, estate, or property, real or personal, whatsoever'—language which affects every description of property, and it is impossible to deny that we are not fettered by previous decisions that a policy of insurance is not within its meaning."

In the case of mortgage, where the sum secured is less than £1,400, it is to the advantage of the public that the *ad valorem* stamp should be the

correct one, it being, in such cases, less than the common deed stamp. Had a different decision been arrived at, the practical result, under the new Act, would be the same where a deed is to be executed; as in such a case the deed containing (as every mortgage deed invariably does) a covenant for the payment of the mortgage money, would fall, if not under the head of "mortgage," at least under that of "covenant," and thus be subject to the *ad valorem* duty instead of the common deed duty as formerly.

Whether the *ad valorem* duty, however, is payable upon an assignment by way of sale of a policy, seems to stand upon a very different footing. Here the words of the Act are, "Conveyance, whether grant, disposition, lease, assignment, transfer, release, renunciation, or of any other kind whatsoever, upon the sale of any lands, tenements, rents, annuities, or other property, real or personal, heritable or moveable, or of any right, title, interest, or claim, into, out of, or upon any lands, tenements, rents, annuities, or other property, that is to say, *for and in respect of the principal or only deed, instrument, or writing, whereby* the lands or other things sold shall be granted, leased, assigned, transferred, released, renounced, *or otherwise conveyed to or vested in* the purchaser or purchasers, or any other person or persons by his, her, or their direction." Here then the *ad valorem* stamp is payable, not in respect of any writing containing the contract, but in respect of that deed or writing by which the subject of the contract is conveyed to or vested in the purchaser. Thus, when the subject of the contract is real estate, the contract itself, not being a conveyance, will not require an *ad valorem* stamp, but an agreement stamp only; although, upon its execution, the purchaser will at once be entitled to an equitable interest in the property, and the vendor become seised in fee of the legal estate in trust for him. When, however, the subject of the contract is a chose in action, it is incapable of conveyance, and is unassignable; and hence it is argued that, in the case in question, no *ad valorem* stamp can be required. Equity, it is said, will give effect to a contract respecting a chose in action, by making the vendor a trustee for the purchaser of the legal right, and enabling the latter to bring an action in the name of the person in whom such legal right for the time being may be vested,* and thus, as far as the nature of the case will admit, compelling a specific performance of the agreement; but no equitable interest passes in the subject of the contract, as is the case upon the conveyance of an equitable estate in real property. The distinction is a somewhat nice one, but it is argued that it is well known to all equity lawyers, and fully proved by the broad distinction made as to the operation of the transfer upon voluntary settlements by deed of equitable interests in real estate on the one hand, and choses in action on the other—the former being considered complete and irrevocable instruments, the latter incomplete, and standing alone inoperative for want of valuable consideration: that although the ordinary form of deed purports to assign the policy, this is rendered immaterial by the rule that instruments are to be stamped according to their legal operation: that, in the words of a strong advocate of the opposite view (Tilsley, p. 7), an instrument which in terms purports to effect a transaction, but which transaction fails by reason of something wanted to

* As any such person would be a constructive trustee, within the meaning of the Trustee Act, 1850, it would seem that a Court of Equity will now be enabled, by virtue of that Act, to authorize a purchaser of a policy to sue thereon in his own name.

perfect the instrument in the form proposed, is not subject to stamp duty according to its purports and intended effect, but may be liable according to its actual operation. Thus an instrument purporting to convey land, and containing a stipulation not to disturb the party in his enjoyment of the property, but having no legal operation as a conveyance, not being a deed, was held to be chargeable with stamp duty as an agreement only.—(Rex *v.* Ridgwell, 6 B & C, 665.)

The current of the decisions appears for some time to have coincided with this view. Thus, in Warren *v.* Howe, 2 B & C, 281, there was an assignment by indenture of a judgment debt, in order that the plaintiff might receive the moneys to be recovered on the judgment, and after payment of the expenses attendant thereon, pay himself the amount of a debt for which the indenture was given as a security; and the objection taken, raised the question whether the deed was properly stamped with an *ad valorem* stamp of £1. 10*s.*, or required a common deed stamp of £1. 15*s.* It might have been expected that the case would have been referred to the general head of "mortgage" in the schedule; but it was argued that the instrument either fell under the term "conveyance," or under the description of a mortgage, as being a "conveyance of property in trust to be sold, and intended only as a security." Lord Tenterden decided that it did not fall under either of these clauses; and referring to the words under the head of "conveyance," already cited, held that the statute enumerating things the subject of conveyance and sale, and usually converted into money (the expression "other property") applied only to property of the same description, and therefore did not include choses in action.

Again, in the case of Belcher *v.* Sykes, 6 B & C, 234, in consideration of the payment of a sum of £50,000, a share in a partnership, the property of which consisted of Government contracts, was assigned by deed to the continuing partner. It was argued that the *ad valorem* stamp was applicable; but the court, referring to Warren *v.* Howe, was of opinion that the subject matter of the contract between the parties was not property within the meaning of the Act.

On the other hand, it may be argued that a right interest and claim in and upon the policy is vested in the purchaser by the deed, which interest, and not the legal right, is the thing intended to be transferred; that, granting the distinction between the voluntary conveyance of an equitable interest in reality, and the assignment of a chose in action, it is impossible to deny that a contract, supported by valuable consideration, will pass an equitable estate in the former as well as a conveyance, and that it is upon the form of a conveyance that the *ad valorem* stamp is imposed; that when there is a valuable consideration, it is the contract that transfers the property in either case; and that if nothing further passes under the subsequent deed in the one case, and the *ad valorem* stamp is, nevertheless, allowed on all hands to be requisite, it would seem to follow that it should be so in the other.

In the latter cases, a view not very different from this appears to have been taken, although there has never been a distinct decision upon the point in question.

Thus, in Horsfall *v.* Hay, 2 Exch. 778, the following document was held improperly stamped with an agreement stamp:—"Memorandum, that A. B. has sold to C. D. all the goods, stock in trade, and fixtures, in the

shop of E. F., at &c., for £90." It was held that it was a conveyance, and that, as it was not within the exemptions to be found under the head of "agreements" as relating to the sale of goods, wares, and merchandise, but containing also the word "fixtures," it was the record of an agreement that from its date the purchaser should have full rights to receive the fixtures, and was therefore a transfer, and subject to the *ad valorem* duty, or that any instrument operating as the record of the transfer of property was a conveyance within the Stamp Act. This is a strong case, but, nevertheless, clearly distinguishable from the case in question.

Again, in the case of Caldwell *v.* Dawson, already mentioned, Baron Alderson remarked, such an interest as is conveyed by this deed would certainly pass under the word "property" in a will; and if so, it is strange to say that it is not property within the Stamp Act. In the case of Warren *v.* Howe, Lord Tenterden seems to have thought that the words of the schedule apply only to such property as could be transferred at law from a seller to a purchaser. Whether that opinion is quite correct is not now the question before us, although it is difficult so to consider it, for equitable estates are sold as well as legal ones, and it is strange to suppose that the Stamp Acts were not meant to apply to such transfers. I think that the words of the schedule are not to be so strictly construed, for they speak of *right, title,* or *interest* in property, and impose a stamp upon any conveyance of such; and there can be no doubt but that this is such a conveyance. And Baron Rolfe, after remarking that the case of Warren *v.* Howe did not decide the question before the court, added, "I own, if ever I should be the purchaser of a judgment debt, I should insist upon an *ad valorem* stamp."

This case, however, it will be remembered, was upon a mortgage transaction, and the decision was upon the mortgage clause. The writer has, moreover, been told by the counsel who argued the case in support of the rule, that upon the Chief Baron remarking (in the course of the argument upon the construction given to the word "property," in the case of Warren *v.* Howe, and its bearing upon the point in dispute,) that the same word is always to be interpreted in the same manner, in the same Act, it was pressed upon the court that the words in the mortgage clause were much more extensive than those in the conveyance, and that, conceding the point in the construction of the latter, the word "whatsoever" must be read as enlarging the meaning of the word "property" in the former.

If these latter dicta are to be considered conclusive, and overruling the prior decisions, the *ad valorem* stamp will in all cases be requisite; and in purchases for which the consideration does not amount to £300, will present the advantage of being smaller in amount than the deed stamp of £1. 15*s.* It is, however, submitted that the question is not yet beyond a doubt; and if so, in such small purchases a careful practitioner may still think it right to fix the larger duty, and may, at the same time, well hesitate before affixing a heavy *ad valorem* stamp in a more important transaction. In considering a question of this nature, it will always be remembered, that a deed or other instrument does not in general derive any validity from the stamps affixed to it. Stamped or unstamped, a conveyance or agreement will equally pass an estate, or be a binding contract. The effect of the Stamp Laws is simply to prevent any such document being received as evidence in a court of law or equity, until the appropriate stamps have been impressed upon it. When such stamps have

not been impressed, either prior to the execution of the instrument, or within such limits as are appointed by the Stamp Act, a penalty indeed becomes payable, but the affixing of the stamps can be claimed as of right, upon the payment of the penalty, which, even under the new Act, can in no case exceed the amount of £10, and double the amount of duty originally omitted to be paid; were it otherwise, a great injustice would be done, for in such a case a mistake in a stamp might result in the loss of the entire subject of the deed, and the property of an innocent purchaser be confiscated through an error of his professional adviser.

FOREIGN INTELLIGENCE.

FRANCE.—*Assurances upon the Lives of Others.*—The question, whether a party having no interest in the life of another could effect an assurance on his life, has been discussed in a 'Memoire' by M. Guinet, Avocat à la Cour d'Appel de Paris, and has since been settled in conformity with his views, by a legal decision in a case tried before the Tribunal de Commerce de la Seine. It is unnecessary to bring forward the particular features of the case. We will confine ourselves to quoting one or two of the leading arguments adduced by M. Guinet to prove that such assurances are unlawful. "Assurance," he contends, "is a preservative contract, its object being to guarantee each individual, distinct from others, against those accidents which may affect his present or his future circumstances. The assurer does not promise, however, the preservation of the actual thing assured. No human power could undertake such a guarantee. On the contrary, the assurer assumes that the thing assured may be either lost or destroyed, and he promises in such a case to represent it by an equivalent. Thus, if we look at the eventual fulfilment of his guarantee, the contract of assurance is a means of acquisition; since that must always be deemed an acquisition which is an actual transfer to the credit of an individual of something which he did not hitherto possess; but since this acquisition only replaces a good which he had lost, it is not actual profit in itself. It is simply the act of placing him in the same position, in general, as if the unforeseen event had not happened."

"This distinguishing character of the contract of assurance is also its *essential character*. The assurer does not offer to the assured any gain or advantage whatever. He offers to him (and it is in this that the utility and the legitimate use of the contract consist) the continuance of the property and of the advantages which he now enjoys. This continuance is effected by the transfer to him of an equivalent, if the things which compose the property or the advantages happen to disappear by one of those unfortunate events which occur suddenly, and beyond the course of ordinary probabilities. The assurer, besides the greater or less chances which he runs by reason of the greater or less degree of accuracy of his calculations, is, as it were, a compensator, who, after having reckoned the average of chances to which all earthly things are subject, brings together into his own hands the individual risks, receives from every one a kind of general contribution, repairs the disasters which happen to some in particular, and thus restores to all the equilibrium of their positions."

Again: "To stipulate for an assurance is to require a guarantee against an event which we fear. He who understands an assurance in a different sense, who desires to stipulate in the event of misfortune for anything beyond a restitution, makes a *wager* but not an *assurance*. To give such a name to his transaction would be both to abuse the word and the idea that it represents."